A license of software is not a taxable retail sale if it meets the criteria set forth at 86 Ill. Adm. Code 130.1935(a)(1)(A)-(E). (This is a PLR.)

July 19, 2006

Dear Xxxxx:

This letter is in response to your letter dated April 4, 2006, in which you request information. The Department issues two types of letter rulings.   Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete.   Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired.   A GIL is not a statement of Department policy and is not binding on the Department.   See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.   In your letter you have stated and made inquiry as follows:

On behalf of our client, COMPANY, we respectfully request the Illinois Department of Revenue ('Department') issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

General Information

Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent COMPANY before the Illinois Department.

This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailer's [sic] Occupation Tax consequences of the actual business practice of the Company.

The Company is not currently under audit or engaged in litigation with the Department with regard to this or any other sales or use tax matter. But, the Company has received

a letter requesting an appointment to examine the books and records from July 2003 to the present for sales and use tax (no audit has started, however). Also, the Company is being audited for income tax as part of an audit of its parent.

To the best knowledge of the Company's personnel, and to the best of our knowledge, the Department has not previously ruled regarding this matter for the Company. Neither the Company nor we have, at any time prior, submitted the same or similar issue to the Department.

The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, address, and the name of its representative be deleted.

Relevant Facts

The Company is engaged in the business of providing internally (inter-Company) technological and data processing support services. As part of its business it acquires licenses of computer software to allow it to perform various computer assisted functions.

One type of license acquired is from ABC. This license is for ABC's Software and related ITAPI software. The license cost, and related support, is $72,000.00 per month (copy of INTR License Agreement attached).

The license is in writing and signed by ABC and the Company. Sections 1.1, 1.4, 1.5 and 8.5 restricts the use and duplication of the underlying software. Sections 1.1, 1.5 and 8.5 prohibits the relicensing, sublicenses or transfer of the software, except to a related party. Section 1.6 provides for the keeping of an archival copy of the software by the Company. Section 9.3 provides that the Company must certify that all copies of the software are permanently deleted (i.e. destroyed) from the Company's computers at the termination of the license.

Opinion Requested

The license of the SOFTWARE is an exempt license under Department Regulation Section 130.1935.

Relevant Authorities and Analysis

Department Regulation Section 130.193S [sic] provides:

1)   A license of software is not a taxable retail sale if:

    A)   it is evidenced by a written agreement signed by the licensor and customer;

    B)   it restricts the customer's duplication and use of the software;

    C)   it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;

D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and

The license for SOFTWARE meets these five requirements. It is in writing signed by both the licensor (ABC) and the license (Company). It restricts the use and duplication of the software to that specifically allowed under the Agreement. It prohibits the Company from licensing, sublicensing or transferring the software. The Company is allowed to make an archival copy at no additional charge. Lastly, it requires the Company to permanently delete the software on termination of the agreement. As you know permanent deletion is the functional equivalent of destroying electronic information. See Webster's Third New International Dictionary, p. 596 (delete means to 'destroy'). See Department of Revenue, ST 05-0017-PLR (10/12/05) (A license in which software is required to be erased from the customer's computer held to qualify as an exempt license).

The Company knows of no authority contrary to the above cited authorities.

Conclusion

The facts indicate that the license agreement for the SOFTWARE meets all five requirements of Regulation Section 130.1935.

Therefore, we respectfully request that the Department issue a ruling that concludes that the Company is correct in its understanding that the license of the SOFTWARE is exempt from Illinois Retailer's Occupation Tax and Use Tax as an exemption license of software.

If the Department has additional questions, needs additional information or anticipates a negative response to this request, it is requested that the Department contact the undersigned first before a written response is given.

DEPARTMENT'S RESPONSE

The Department's regulation on "Computer Software" at 86 Ill. Adm. Code 130.1935(a)(1) states that:

1) A license of software is not a taxable retail sale if:

A) it is evidenced by a written agreement signed by the licensor and the customer;

B) it restricts the customer's duplication and use of the software;

C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;

D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and

E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

Based upon the information provided, including your letter dated April 4, 2006 and the April 1998 SOFTWARE Term License Agreement between ABC Systems and COMPANY1, the license of the SOFTWARE meets the required criteria to be an exempt license under Department Regulation Section 130.1935. As such, the transfer of the SOFTWARE pursuant to this agreement is not a taxable retail sale, and the transfer may be made free of sales tax.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk